

1 James Cunningham X
2 California Men's Colony State Prison
3 P.O. Box 8101
4 San Luis Obispo, CA 93409-8101
IN PRO PER

FILED

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
ORIGINAL

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JAN -9 2008

UNITED STATES District Court
SOUTH District of CALIFORNIA

11
12 JAMES Cunningham Petitioner,
13
14 V.S.

15 John Marshall (Warden CMC-E)
16 Respondent

Motion for stay and ABYEANCE
of Federal HABEAS PETITION
to EXHAUST ADDITIONAL
UNEXHAUST CLAIMS IN THE
STATE COURTS.

RESPONSE TO UNITED STATE
DISTRICT COURT; SHOWING CAUSE.

Petitioner, JAMES Cunningham, in Pro Per, respectfully moves
this Honorable Court to show cause of stay or ABYEANCE while
Petitioner goes back to the State court to exhaust additional
unexhausted claims that were not included in the Petition in wake
of The U.S Supreme Court recent decision in Petines v. Weber (2005)
124 S.Ct. 1528. This Motion is based on the facts and
and Memorandum of authorities stating why the District Court
should grant the Petitioner's stay and abeyance.

MEMORANDUM POINTS AND AUTHORITIES

PETITIONER would like to EXHAUST THESE UNEXHAUSTED CLAIMS
(SEE, E.G. Kelly v. Small, 315 F.3d). Also to Prove beyond a reasonable
doubt IN RE WINSHIP (1970) 397 U.S. 358, 90 S.Ct 1068.

- 1) West's Ann. Cal. Penal Code § 686 Criminal Procedure Preliminary Provisions
- 2) Current through CH. 172 of 2007 Reg. Sess. URGENT Legislation 686.
- 3) Defendant rights: speedy and public trial; Production of witness; Confronting
- 4) adverse witness; hearsay evidence; deposition.
- 5) In a criminal action the defendant is entitled to: Search warrants
- 6) 1524 issuance; grounds: special Master. West's Ann. Cal. Health & Safety
- 7) Code: 11488.4 Petition of forfeiture; Physical seizure of assets.
- 8) Notice of Seizure; investigation; publication; Motion for return of Property;
- 9) witnesses; for causes challenges. CA Civ. Pro 230. CA Jur. 3d Criminal Law:
- 10) Post-Trial Proceedings. 533 Ineffective representation by Defense;
- 11) Counsel. 1 Circumstances Giving Rise to Prejudicial Conflict of interests
- 12) between criminal defendant and defense counsel-State cases.
- 13) AM. Jur. 2d Criminal Law 14; Effect of finding of competence to
- 14) stand trial. CA Jur. 3d Criminal Law: Post-trial Proceeding (533) INEFFECTIVE
- 15) representation by Defense Counsel. 5 Within CAL CRIM L 3d CRIMINAL
- 16) Trial. 694 Necessity for Present Mental Competence.
- 17) 5* Within Cal. Crim L 3d Criminal Trial Test of incompetency.
- 18) People v. Kurbegov (App. 2 Dist. 1982) 188 CAL Rptr. 268, 138 CAL (APP 3D 73).
- 19) A proceeding to determine the question of present sanity of accused.
- 20) not a part of the criminal prosecution but is a special proceeding. Civil
- 21) in character. (EX PARTIE) SEE IN Shaw (App. 1 Dist. 1953) 115 CAL App. 2d 753
- 22) 252 P.2d 970. EVIDENCE (Sixth & Fourteenth Amendments) U.S. CONST: Crawford v.
- 23) Washington (2004) (541 U.S. 36; 1d; Const Art 1, 7.) Bockting v. Bayor
- 24) (9th Cir. 2005) 399 F.3d 1010; Nature and grounds of incompetency in
- 25) General: U.S. v. Abanze-Barrera, 227 F.3d 959 ca. 9 (Cal. 2001)..
- 26) Respectfully Submitted James Cunningham Petitioner in Pro Per /
- 27) DATE: 12-25-07 I, JAMES CUNNINGHAM declare under penalty of perjury
- 28) that the foregoing is true and correct to the best of my knowledge & beliefs.

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INTRODUCTION for stay of ABEYANCE1) To The Honorable Court:

- 2) Petitioner is introducing the Courts with 5 serious Motions for
3) Satisfaction. The Court ask Petitioner to show cause for a
4) stay of ABEYANCE. Petitioner will stand by these Motions
5) discovered and excuted them for a stay of ABEYANCE.
- 6) Petitioner hope the Court show consideration of these newly
7) discover facts. Petitioner and inmate Griffin form this cause as
8) PRO PET. Since these newly discovered trial errors are so flouze around.
9) The ProP's will Place a Master INDEX the Motions and R.T. EXHITS
10) will be place upon this introduction 1,2,3,4,5, to refer to.
11) The claims are scattered about the R.T. and throughout Trial.
12) So the Master INDEX will be sufficient for finding well needed
13) clauses. So to find the abusive error's of Petitioners in Justice,
14) and the highly of relief ensued.
- 15)

16) I, James H Cunningham, declare under PENALTY OF PERJURY
17) that the foregoing is true and correct to the best of
18) MY Knowledge & beliefs. Respectfully submitted



19)

20)

21)

22)

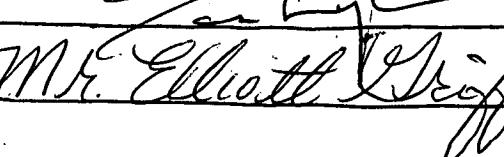
23)

24)

25)

26)

Sig: Respectfully submitted:



DEC 25 2007

DATE: 12-25-07

